

Order

Michigan Supreme Court
Lansing, Michigan

November 4, 2022

Bridget M. McCormack,
Chief Justice

164611 & (29)

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

JOHN RICHARD GORDON,
Plaintiff-Appellee,

v

SC: 164611
COA: 359658
Macomb CC: 2016-000594-DM

JENNIFER MARIE GORDON,
Defendant-Appellant.

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the April 13, 2022 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

MCCORMACK, C.J. (*concurring*).

I concur in the Court's decision to deny leave, because appellant failed to object to the referee's report and recommendation within the time mandated by MCR 3.215(E)(4). I write separately, however, to emphasize the systemic problem at the heart of this case: the fact that self-represented litigants must navigate rules and processes devised by lawyers and judges for lawyers and judges in cases where the stakes are as high as the right to parent your own child.

The number of people navigating civil-justice problems without lawyers has grown exponentially over the last two decades. In 2022, 74% of low-income households in the United States experienced at least one civil legal problem in the past year, but these individuals sought legal assistance for only 25% of the problems that substantially impacted their lives. See Legal Services Corporation, *2022 Justice Gap Study* <<https://justicegap.lsc.gov/resource/executive-summary/>> (accessed October 27, 2022) [<https://perma.cc/24SY-4837>]. The cost of counsel is simply prohibitive. While Legal Service Corporation-funded organizations help many low-income litigants, this year these organizations turned down 49% of the 1.9 million requests for assistance received. *Id.* Even when they could assist, legal-services organizations only had the resources to fully resolve 56% of cases. *Id.* Michigan is not exempt from this national trend: as of 2015, there were 285 legal-aid attorneys providing services for an estimated 1,961,687 low-

income individuals. See State Bar of Michigan, *Documenting the Justice Gap in Michigan* (Spring 2017 update) <<https://www.michbar.org/file/programs/atj/pdfs/JusticeGap.pdf>> (accessed October 27, 2022) [<https://perma.cc/RTD9-4ZK7>]. We well know the devastating consequences of attempting to navigate our complex legal system without a lawyer.¹ And we won't be able to lawyer our way out of this dilemma.

Michigan is fighting the access-to-justice crisis on many fronts. One is getting people the information they need to be able to exercise their legal rights. McCormack, *Access to Justice Requires Plain Language*, 100 Mich B J 44, 45 (February 2021). For example, our courts maintain a website with resources—like a handbook of legal terms and a guide to handling civil appeals—for self-represented litigants.² “Michigan Legal Help” provides practical, easy-to-follow, web-based information for people navigating justice issues without lawyers.³ And the Justice for All Commission is working on additional innovations to give people the tools they need to understand and resolve their legal problems.⁴ These are steps in the right direction, but we can do more yet.

¹ See, e.g., Kroeper et al, *Underestimating the Unrepresented: Cognitive Biases Disadvantage Pro Se Litigants in Family Law Cases*, 26 Psychol, Pub Pol’y, & L 198, 199 (2020); Seron et al, *The Impact of Legal Counsel on the Outcomes for Poor Tenants in New York City’s Housing Court: Results of a Randomized Experiment*, 35 L & Soc’y Rev 419, 428 (2001); Rulli & Rieser, *Assuring Access to Pro Se Litigants in the Courtroom*, Philadelphia Law 23-24 (Winter 2022).

² Michigan Courts, *Pro Per Manuals* <<https://www.courts.michigan.gov/courts/court-of-appeals/clerks-office/pro-per-manuals/>> (accessed October 27, 2022) [<https://perma.cc/5UTN-W66G>]; Michigan Courts, *Self-Represented Litigants* <<https://www.courts.michigan.gov/resources-for-the-public/self-represented-litigants/>> (accessed October 27, 2022) [<https://perma.cc/LMJ2-PPHA>].

³ Michigan Legal Help, *Self-Help Tools* <<https://michiganlegalhelp.org/self-help-tools>> (accessed October 27, 2022) [<https://perma.cc/PLU6-Q4MC>].

⁴ Michigan Courts, *Justice for All* <<https://www.courts.michigan.gov/administration/special-initiatives/justice-for-all-commission/>> (accessed October 27, 2022) [<https://perma.cc/3CSY-HU4P>]. The Commission’s strategic plan highlights “understandability”—ensuring that people can meaningfully engage with the civil justice system and use its tools to help address their problems, regardless of their level of experience—as key to improving access to justice. Michigan Justice for All Taskforce, *Strategic Plan and Inventory Report* (December 2020) <<https://www.courts.michigan.gov/4af54d/siteassets/committees,-boards-special-initiatives/justiceforall/final-jfa-report-121420.pdf>> (accessed October 27, 2022) [<https://perma.cc/G3N8-GRBH>].

Rather than putting the burden on self-represented litigants to master rules and processes built by lawyers and judges for lawyers and judges, we should meet them where they are. Simplifying court processes and using plain language will help, and judges can be part of this solution. To start, this Court should consider adopting the American Bar Association’s 2007 amendment to Rule 2.2 of the Model Code of Judicial Conduct. Rule 2.2 has long required judges to “perform all duties of judicial office fairly and impartially,” but the 2007 amendment added, “It is not a violation of this Rule for a judge to make reasonable accommodations to ensure *pro se* litigants the opportunity to have their matters fairly heard.” See also Rulli & Rieser, *Assuring Access to Pro Se Litigants in the Courtroom*, Philadelphia Law 26 (Winter 2022). Many states, from California to Indiana, have adopted some version of this rule, along with examples of reasonable accommodations.⁵ *Id.* By adopting the amendment to this rule and encouraging accommodations for self-represented litigants, we can ensure greater and better access to justice in Michigan. This, in turn, will grow the public’s confidence in the judiciary and thereby enhance the rule of law.

⁵ “Reasonable accommodations” vary from state to state, but may include liberally construing pleadings and opportunities to amend, modifying the traditional order of taking evidence and hearing argument, and permitting narrative testimony. *Id.*



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 4, 2022

Clerk